



Public Service Commission

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TALLAHASSEE, FLORIDA 32399-0850

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DATE: JULY 31, 2000

TO: DIRECTOR, DIVISION OF RECORDS AND REPORTING (BAYÓ)

FROM: DIVISION OF ECONOMIC REGULATION (DEVLIN, MERTA, WHEELER) *S.M.J.S.*
DIVISION OF LEGAL SERVICES (ELIAS) *RVÉ* *DPW* *DM* *[Signature]*

RE: DOCKET NO. 950379-EI - DETERMINATION OF REGULATED EARNINGS OF TAMPA ELECTRIC COMPANY PURSUANT TO STIPULATIONS FOR CALENDAR YEARS 1995 THROUGH 1999.

AGENDA: 08/01/00 - REGULAR AGENDA - INTERESTED PERSONS MAY PARTICIPATE

CRITICAL DATES: NONE

SPECIAL INSTRUCTIONS: NONE

FILE NAME AND LOCATION: S:\PSC\ECR\WP\950379.RCM

CASE BACKGROUND

On March 1, 1996, Tampa Electric Company (TECO or the Company) submitted its 1996 Forecasted Earnings Surveillance Report in compliance with Rule 25-6.1353, Florida Administrative Code. According to that report, TECO forecasted an achieved return on equity (ROE) of 13.27% which exceeded its then currently authorized ROE ceiling of 12.75%. Due to the high level of TECO's forecasted earnings, meetings were held to explore the possible disposition of the excess earnings. TECO, the Office of Public Counsel (OPC), the Florida Industrial Power Users Group (FIPUG), and the Staff participated in the meetings.

On March 25, 1996, TECO, OPC, and FIPUG filed a joint motion for approval of a stipulation that resolved the issues regarding TECO's overearnings and the disposition of those overearnings for the period 1995 through 1998. This stipulation was approved by Order No. PSC-96-0670-S-EI, issued May 20, 1996. The stipulation, agreed to by TECO, OPC and FIPUG:

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Order No. PSC-96-0670-S-EI, issued May 20, 1996. The stipulation, agreed to by TECO, OPC and FIPUG:

- 1) freezes existing base rate levels through December 31, 1998;
- 2) refunds \$25 million plus interest over a one year period commencing on October 1, 1996;
- 3) defers 60% of the net revenues that contribute to a return on equity (ROE) in excess of 11.75% for 1996;
- 4) defers 60% of the net revenues that contribute to an ROE in excess of 11.75% up to a net ROE of 12.75% for 1997;
- 5) defers 60% of the net revenues that contribute to an ROE in excess of 11.75% up to a net ROE of 12.75% for 1998;
- 6) refunds any net revenues contributing to a net ROE in excess of 12.75% for 1998 plus any remaining deferred revenues from 1996 and 1997;
- 7) allows TECO the discretion to reverse and add to its 1997 or 1998 revenues all or any portion of the balance of the previously deferred revenues;
- 8) prohibits TECO from using the various cost recovery clauses to recover capital items that would normally be recovered through base rates; and
- 9) requires consideration of the regulatory treatment of the Polk Power Station separately.

Order No. PSC-96-1300-S-EI issued, October 24, 1996, in Docket No. 960409-EI (Prudence review to determine the regulatory treatment of TECO's Polk Unit) approved a stipulation entered into by TECO, OPC and FIPUG. The stipulation resolved the issues in the Polk Unit docket, agreed to a rate settlement covering TECO's base rates and rate of return for the period January 1, 1999 through December 31, 1999, and modified the Stipulation approved in Order No. PSC-96-0670-S-EI. It resulted in an additional one year extension of the rate freeze established by the first stipulation and a guaranteed additional \$25 million refund starting in October, 1997.

The stipulation:

- 1) extends the existing freeze on TECO's base rates from January 1, 1999, through December 31, 1999;
- 2) precludes TECO from filing a rate increase request prior to July 1, 1999, and precludes TECO from requesting an interim increase in any such docket which is filed prior to January 1, 2000;
- 3) provides for an additional \$25 million refund over fifteen months beginning about October 1, 1997 and credited to customer's bill based on actual KWH usage adjusted for line losses;
- 4) allows TECO to defer into 1999 any portion of its 1998 revenues not subject to refund;
- 5) provides for the refund in the year 2000 of 60% of any revenues which contribute to a ROE in excess of 12% up to a net ROE of 12.75% for calendar year 1999;
- 6) provides for the refund in the year 2000 of 100% of any revenues which contribute to a ROE in excess of 12.75% for calendar year 1999;
- 7) resolves all of the issues in Docket 960409-EI by conferring a finding of prudence on the commencement and continued construction of the Polk Unit by TECO;
- 8) allows TECO to include the actual final capital cost of the Polk Unit in rate base for all regulatory purposes, up to an amount equal to one percent above the capital cost estimate of \$506,165,000 plus related estimated working capital of \$13,029,000;
- 9) allows TECO to include the full operating expense of the Polk Unit in the calculation of net operating income for all regulatory purposes (estimated to be \$20,582,000 net of DOE funding for the first 12 months);
- 10) places the entire investment in the Port Manatee site and any future gain on sale of this site to an independent third party below the line;

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- 11) continues to use the separation procedure adopted in the company's last rate case to separate any current and future wholesale sales from the retail jurisdiction; and
- 12) provides that any further Commission action relative to this stipulation will be considered in Docket No. 950379-EI.

The parties filed an amendment to the stipulation which allows the Commission to determine the appropriate separation treatment of any off-system sale that is priced based on the Polk Unit's incremental fuel cost. This amendment addressed concerns regarding the potential subsidization of wholesale sales by the retail ratepayers.

By Order No. PSC-97-0436-FOF-EI, issued April 17, 1997, the Commission determined that \$50,517,063, plus interest should be deferred from 1995. Of the \$50,517,063, \$10 million has already been refunded to the customers. By Order No. PSC-99-0683-FOF-EI, issued April 7, 1999, the Commission determined that, after refunding \$15 million, \$22,081,064 plus interest remained to be deferred from 1996. Based on the Commission's decisions for 1995 and 1996, and the Staff recommendation for 1997, at December 31, 1997, there was approximately \$44.5 million, including interest, to be deferred into 1998 earnings. By Order No. PSC-99-1940-PAA-EI, issued October 1, 1999, the Commission determined that the maximum allowed revenue reversal for 1997 was \$27,056,807. For 1998, by Order No. PSC-99-2007-PAA-EI, issued October 14, 1999, the Commission determined that the maximum allowed revenue reversal was \$34,069,010 and that the refund, including interest, as of December 31, 1998, was \$11,226,598.

On October 22, 1999, FIPUG filed a protest of Order Nos. PSC-99-1940-PAA-EI and PSC-99-2007-PAA-EI. On October 22, 1999, TECO filed a protest of Order No. 99-1940-PAA-EI and on November 3, 1999 filed a protest of Order No. 99-2007-PAA-EI. On July 31, 2000, TECO, FIPUG and OPC filed a settlement agreement (Attachment A).

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DISCUSSION OF ISSUES

ISSUE 1: Should the settlement agreement (Attachment A) proposed by Tampa Electric Company, the Florida Industrial Power Users Group and the Office of Public Counsel be approved?

RECOMMENDATION: Yes, the settlement agreement for resolving all issues raised in Docket No. 950379-EI with respect to Tampa Electric Company's earnings in 1997 and 1998 should be approved. (MERTA)

STAFF ANALYSIS: Per the settlement agreement, TECO, FIPUG and OPC agreed:

- 1) the refund period shall begin as soon as practicable after Order Nos. 99-1490 and 99-2007 are made final and non-appealable,
- 2) to a refund of \$13 million plus interest on the unamortized amount of the refund, and
- 3) to file a Joint Dismissal of the Appeal in FIPUG v. FPSC, Supreme Court Case No. SC 00-1209.

Based on discovery thus far, staff is not aware of any significant issues that were not addressed in Order Nos. PSC-99-1490-PAA-EI and 99-2007-PAA-EI, and staff still believes that the amount of 1997 and 1998 earnings and the proposed refund in the original PAA orders are reasonable. Based on the amount of refund proposed in Order No. PSC-2007-PAA-EI, staff calculates a refund amount, including interest, of \$12,309,085 through September 1, 2000. The parties propose to refund \$13 million, including interest, through September 1, 2000. Therefore, staff recommends that the settlement agreement be approved.

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ISSUE 2: Should this docket be closed?

RECOMMENDATION: No. This docket should remain open pending the review of TECO's 1999 earnings and the determination of the appropriate amount of any additional deferred revenues related to 1999. (ELIAS)

STAFF ANALYSIS: This docket was opened to review TECO's earnings for both 1995 and 1996. However, Order No. PSC-96-0670-S-EI (TECO's 1995 earnings review), and Order No. PSC-96-1300-S-EI (Prudence review to determine the regulatory treatment of TECO's Polk Unit), approve stipulations that provide that any further Commission action relative to the stipulations be considered in Docket No. 950379-EI. Therefore, this docket should remain open pending the review of TECO's earnings for 1999.

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ATTACHMENT A
PAGE 1 OF 6

AUSLEY & MCMULLEN

ATTORNEYS AND COUNSELORS AT LAW

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(850) 224-9115 FAX (850) 222-7560

July 31, 2000

BY HAND DELIVERY

Ms. Blanca S. Bayo, Director
Division of Records and Reporting
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, Florida 32399-0850

Re: Determination of regulated earnings of Tampa Electric Company
Pursuant to Settlement Agreement for Calendar Years 1995 through 1999;
Docket No. 950379-EI

Dear Ms. Bayo:

Enclosed for filing in the above docket are fifteen (15) copies of the Settlement Agreement on behalf of the Office of Public Council, the Florida Industrial Power Users Group and Tampa Electric Company.

Please acknowledge receipt and filing of the above by stamping the duplicate copy of this letter and returning the same to this writer.

Thank you for your assistance in connection with this matter.

Sincerely,


Lee L. Willis

LLW/bjd
Enclosures

DOCUMENT NUMBER-DATE

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BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

**In re: Determination of Regulated Earnings of Tampa)
Electric Company pursuant to Settlement Agreement)
for Calendar Years 1995 through 1999)** **DOCKET NO. 950379-EI**
Filed: July 31, 2000

SETTLEMENT AGREEMENT

The Office of Public Counsel ("OPC"), the Florida Industrial Power Users Group ("FIPUG") and Tampa Electric Company ("Tampa Electric" or "the company") collectively referred to as "the Parties" enter into this Agreement to settle the various issues pending between the Parties as described herein. Accordingly, the Parties have agreed as follows:

1. The Parties agree that Order Nos. PSC-99-1940-PAA-EI ("99-1940") and PSC-99-2007-PAA-EI ("99-2007") should be made final orders by the Commission.
2. In order to avoid what could be a delay of two years or more in making the refund, the Parties agree to the following:

The refund period shall begin as soon as practicable after Order Nos. 99-1940 and 99-2007 are made final and non-appealable. A refund of \$13 million will be reflected as a credit on customer's bills calculated by multiplying a levelized factor adjusted for line losses times the actual kwh usage for the period of the refund which shall not exceed four months. The refund shall include interest on the unamortized amount of the refund. Any amount over or under the refund shall be treated as a true-up component in the normal course of Tampa Electric's fuel cost recovery proceedings. The Parties' goal is to begin the refund by September 1, 2000.

3. FIPUG and OPC will file a Joint Dismissal of the Appeal in FIPUG v. FPSC, Supreme Court Case No. SC 00-1209.

4. The Parties agree that this Settlement Agreement is intended to and shall settle the disposition of all issues raised in Docket No. 950379-EI with respect to the company's earnings in 1997 and 1998.

5. This Settlement Agreement shall be submitted to the FPSC forthwith and shall be effective upon Commission approval. The Parties agree that if the FPSC does not adopt this Settlement Agreement in its entirety, without modification, this Settlement Agreement shall become null and void and of no effect. Any dispute with respect to this Agreement shall be resolved by the Commission.

6. The Parties agree to actively support approval of this Settlement Agreement by the Commission at the earliest possible time. The Parties agree not to protest, seek reconsideration or judicial review of the Commission's approval of the Settlement Agreement or seek modification of the Settlement Agreement subsequent to final Commission approval except by mutual agreement.

7. The Parties acknowledge this Settlement Agreement is being entered into for purposes of settlement only and that the Parties are entering into this Settlement Agreement to avoid the expense and length of further legal proceedings and the uncertainty and risk inherent in any litigation. Neither this Settlement Agreement nor any action to reach, effectuate or further this Settlement Agreement may be construed as, or may be used as an admission by or against any party. Entering or carrying out this Settlement Agreement or any negotiations related thereto shall not in any event be construed as, or deemed to be evidence of, an admission or concession by any of the Parties or a waiver of any applicable claim or defense, otherwise available.

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8. The Parties participated jointly in the drafting of this Settlement Agreement and, therefore, the terms of this Settlement Agreement are not intended to be construed against any Party by virtue of draftsmanship.

9. This Settlement Agreement may be executed in several counterparts, each of which shall constitute an original and all of which together constitute one and the same instrument.

IN WITNESS WHEREOF, this Settlement Agreement has been executed on the 31st day of July, 2000 by the undersigned counsel of record for the Parties hereto and/or by the Parties themselves in counterparts each of which shall be deemed an original.

Office of Public Counsel

Florida Industrial Power Users Group

By Jack Shreve

Jack Shreve
Office of Public Counsel
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Tallahassee, FL 32399-1400

By _____
John W. McWhirter, Jr.
McWhirter, Reeves, McGlothlin,
Davidson, Decker, Kaufman,
Arnold & Steen, P.A.
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Tampa Electric Company

By _____
Hugh Smith, Vice President
Energy Services and Marketing
Tampa Electric Company
Post Office Box 111
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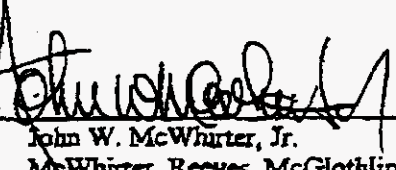
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Florida Power Industrial Users Group

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